

FCC MAIL SECTION

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Before the
Federal Communications Commission
Washington, D.C. 20554

DISPATCHED BY

In the Matter of

Request for Review
of the Decision of

the Universal Service Administrator by

Gallup-McKinley County Schools
Gallup, New Mexico

Federal-State Joint Board on Universal Service

Changes to the Board of Directors of the
National Exchange Carrier Association, Inc.

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File No. SLD-77079

CC Docket No. 96-45

CC Docket No. 97-21 ✓

ORDER

Adopted: October 20, 1999

Released: October 20, 1999

By the Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration a Letter of Appeal, filed July 22, 1999, by the Gallup-McKinley County Schools (Gallup-McKinley), seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator). Gallup-McKinley seeks review of the SLD's denial of the application it filed for internal connections under the schools and libraries universal service support mechanism.¹ For the reasons set forth below, we deny the Letter of Appeal and affirm the SLD's denial of Gallup-McKinley's application for discounts for internal connections.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for

¹ Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

discounts for eligible telecommunications services, Internet access, and internal connections.² The window for the filing of applications, such as Gallup-McKinley's, for the first funding year closed on April 15, 1998.

3. By letter dated February 18, 1999, the SLD denied Gallup-McKinley's request for discounts for internal connections provided by IBM because "[a] significant portion of the request includes a request for WAN [wide area network] connections, [a] Firewall Server, NetVista Servers and software which are ineligible product(s) servic (sic)." Gallup-McKinley appealed the SLD's decision by letter dated February 26, 1999. On June 28, 1999, the SLD affirmed its initial funding decision and denied Gallup-McKinley's appeal.³ Specifically, the Administrator's Decision on Appeal explained that the internal connections service to be provided by IBM contains "components, (such as NetVista, the firewall server and WAN cabling) which are ineligible for funding under the E-rate program and other items for which we were unable to identify a qualified contract under the E-rate program."⁴ Moreover, the Administrator noted that "[t]here were differences, which appear to be substantial, between the documentation which was submitted during the initial application period and the documentation that was submitted both with your appeal and in response to recent inquiries."⁵

4. In its Letter of Appeal to the Commission, Gallup-McKinley challenges the SLD's denial of its request for internal connections discounts. Although Gallup-McKinley concedes that the original contract between Gallup-McKinley and IBM included the construction of a WAN, it claims that it rewrote the IBM contract "with change order number 2 which was signed on or about April 7, 1999,⁶ removing the entire WAN from the IBM contract" and that "a new contract with US West was signed April 7, 1998, to lease the WAN

² 47 C.F.R. §§ 54.402, 54.5 03.

³ Administrator's Decision on Appeal, dated June 28, 1999.

⁴ Administrator's Decision at 1.

⁵ Administrator's Decision at 1.

⁶ Although Gallup-McKinley states that the IBM contract change was signed in 1999, it appears that this is a typographical error and that Gallup-McKinley intended to assert that the amendment was signed in 1998.

as per the change order from the FCC."⁷ Gallup-McKinley's Form 471 application is dated April 7, 1998.

5. We have carefully reviewed Gallup-McKinley's application as well as the SLD's records relating to this application, and we conclude that the SLD properly denied Gallup-McKinley's application for the discounts at issue here. Gallup-McKinley asserts that it amended its IBM contract in response to the Commission's *Fourth Order on Reconsideration*, which was published in the Federal Register on January 13, 1998, three months before the close of the application filing window.

6. Review of the SLD's records reveals, however, that the SLD received no documentation from Gallup-McKinley during the application processing period reflecting a change in its contract with IBM to remove the purchase of the WAN. According to the SLD, and as evidenced by the SLD's records, reference to the Change Request #02 Gallup-McKinley refers to in its Letter of Appeal first appeared with its own initial appeal to the SLD, dated February 26, 1999. While Gallup-McKinley did provide SLD with a copy of an April 6, 1998 letter from US West regarding potential leasing of the network, this letter only documents that Gallup-McKinley and US West "intend to negotiate and execute an agreement" for the proposed network. The letter further provides that if negotiations were not complete by April 27, 1998, neither party was obligated for the services under negotiation.⁸ Gallup-McKinley failed to provide SLD with any further documentation to reflect an executed contract to lease a network from US West. Thus, not only did SLD have no evidence that the contract for the purchase of a WAN from IBM had been changed, but it also had no final contract reflecting a lease agreement with US West.

7. We therefore conclude that the application that was before SLD contravened section 54.518 of the Commission's rules, which provides that the purchase of WANs to provide telecommunications services is ineligible for universal service discounts.⁹ In light of these findings, we conclude that, based on the record, SLD correctly denied funding for Gallup-McKinley's internal connections request.

⁷ Appeal Letter at 3. Under section 54.518 of the Commission's rules, the purchase of wide area networks (WANs) to provide telecommunications by states, schools, or libraries is not eligible for universal service discounts. See 47 C.F.R. § 54.518; see also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourth Order on Reconsideration, 13 FCC Rcd 5318, 5430-31 (1997) (*Fourth Order on Reconsideration*).

⁸ See Letter from Lee B. Reynolds, Education Account Manager, U S West Communications to Robert Gomez, Superintendent, Gallup McKinley County Schools District, dated April 6, 1998.

⁹ 47 C.F.R. § 54.518.

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the appeal filed by Gallup-McKinley County Schools on July 22, 1999, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read 'LMZ', with a long horizontal flourish extending to the right.

Lisa M. Zaija
Deputy Chief, Common Carrier Bureau